

Claims 14-18 were rejected under § 103(a) as unpatentable over Stavroff et al. '145 further in view of Steward et al. '313, Epstein '593, and Fowler '961, further in view of U.S. Patent No. 5,827,870 to Chodosh ("Chodosh '870").

Reexamination of the application as amended, reconsideration of the rejections, and allowance of the claims remaining for consideration are respectfully requested.

The shortened three-month statutory period for response expires on January 10, 2000. Accordingly, this response is being filed in a timely manner.

II. AMENDMENTS TO THE APPLICATION

Entry of the amendments to the application is respectfully requested. As detailed below, these amendments introduce no new matter. The term "water soluble base" in claims 14 and 18 is clarified in these claims by recitation of the language found at page 3, lines 6-8 of the specification. Other minor amendments are made to these claims for clarity to delete language such as "such as" and "preferably" where appropriate.

These amendments introduce no new matter. Additionally, they are appropriate after final action under 37 C.F.R. § 1.116 because they do not raise new issues or require a new search. Accordingly, entry of these amendments is respectfully requested.

II. THE REJECTIONS UNDER THE SECOND PARAGRAPH OF 35 U.S.C. § 112

Claims 14-18 were rejected under the second paragraph of 35 U.S.C. § 112 as indefinite. To the extent that these rejections have not been obviated by the amendments to the application, they are respectfully traversed.

The term "Dead Sea salt" is clearly defined in the specification, e.g. at page 5, lines 11-22. As patent claims must be interpreted in light of the specification, Slimfold Manufacturing Co. v. Kinkead Industries, 1 U.S.P.Q. 2d 1563 (Fed. Cir. 1987), the term "Dead Sea salt" is clear in light of the specification.

The term "water soluble base" has been clarified by amendment of claims 14 and 18.

Applicant has amended claims 14 and 18 to delete the use of terms that do not clearly define the subject matter being claimed. These include "such as" and "preferably". This obviates any basis for rejection on these grounds.

With respect to the comments rejecting claim 15, although Dead Sea salt is water soluble, the salt exists in crystalline, granular form and is added to the composition in that form. Although it eventually would dissolve, it remains in crystalline granular form during the cleaning process. This is clarified in the specification at page 3, lines 3-5.

Accordingly, the Examiner is respectfully requested to withdraw these rejections.

III. THE PRIOR ART REJECTIONS

A. The Rejections Under 35 U.S.C. § 102(e)

Claims 14-15 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 5,866,145 to Stavroff et al. ("Stavroff et al. '145"). As detailed below, Stavroff et al. '145 has properly been removed as prior art by the declaration of Ron Lewis, dated July 29, 2000 ("Lewis Declaration").

It is well established that an anticipatory reference can be disposed of by a declaration or affidavit filed under 37 C.F.R. § 1.131 as long as the affidavit shows that

Applicant was in possession of as much of the claimed invention as the reference teaches. In re Stempel, 113 U.S.P.Q. 77 (C.C.P.A. 1957). In In re Stempel, a claim to a genus of chemical compounds was rejected under 35 U.S.C. § 102 as anticipated by a reference that disclosed a particular species, species X, within the scope of the claimed genus. While the Applicant's showing by declaration or affidavit under 37 C.F.R. § 1.131 did not make out a *prima facie* case of possession of the entire genus, it did show completion of the invention of species X before its disclosure in the reference.

This is exactly the situation here with respect to the Stavroff et al. '145. Stavroff et al. '145 teaches a genus that includes a Dead Sea salt and an emollient. Applicant, by way of the Lewis Declaration, has shown that it had prepared a composition containing Dead Sea salt and an emollient before the filing date of Stavroff et al. '145, January 28, 1997. The lipid soluble ingredients shown in the exhibit of photocopied page 108 to the Lewis Declaration include a number of ingredients that one of ordinary skill in the art would recognize as emollients. The specification shows, e.g., at page 7, line 21, that emulsifiers also serve as emollients.

Thus, Applicant has shown that it had possession of the generic invention recited in Stavroff et al. '145 before the filing date of Stavroff et al. '145. This disposes of Stavroff et al. '145 as a reference under 35 U.S.C. § 102(e). The Examiner is therefore respectfully requested to withdraw this rejection.

The comments made at pages 3-4 of the Office Action that the instant claims are broader in scope than the compositions in the declaration is not a proper ground for failure to consider the declaration in view of the holding in In re Stempel.

B. The Rejections Under 35 U.S.C. § 103(a)

Claims 14, 15, and 17 were rejected under 35 U.S.C. § 103(a) as unpatentable over Stavroff et al. '145 in view of U.S. Patent No. 5,922,313 to Steward et al. ("Steward et al.

'313"), U.S. Patent No. 5,855,593 to Epstein ("Epstein '593"), and U.S. Patent No. 5,720,961 to Fowler et al. ("Fowler et al. '961").

Claims 14-18 were rejected under 35 U.S.C. § 103(a) as unpatentable over Stavroff et al. '145, Steward et al. '313, Epstein '593 and Fowler et al. '961, and further in view of U.S. Patent No. 5,827,870 to Chodosh ("Chodosh '870").

It is well established that a rejection under 35 U.S.C. § 103(a) for obviousness must be withdrawn when one of the references relied on for the rejection is negated by the filing of a properly presented affidavit or declaration under 37 C.F.R. § 1.131 where the affidavit or declaration shows that the Applicant was in possession of as much as was taught by the reference. In re Stryker, 168 U.S.P.Q. 372 (C.C.P.A. 1971); In re Dardick, 196 U.S.P.Q. 834 (C.C.P.A. 1974). Accordingly, Stavroff et al. '145 is removed as a reference for these obviousness rejections.

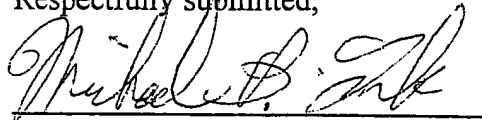
None of the references, other than Stavroff et al. '145, teaches the use of Dead Sea salts as a cleaning agent in a cosmetic composition as recited in these claims. Accordingly, the Examiner is therefore respectfully requested to withdraw these rejections.

IV. CONCLUSION

In conclusion, claims 14-18, remaining for consideration, particularly point out and distinctly claim that which Applicant regards as his invention. These claims are neither

anticipated by nor obvious over the references of record, in light of the Lewis Declaration. Accordingly, prompt allowance of these claims is respectfully requested.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael B. Farber", is written over a horizontal line.

Michael B. Farber

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